



A Shadow Over Democracy

2016 IPI/AMI Zambia Press Freedom Mission Report

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The locked gates outside the shuttered offices of daily Zambian tabloid newspaper *The Post* in Lusaka on July 13, 2016.
Photo: IPI



Introduction

Delegates from the International Press Institute (IPI) and the African Media Initiative (AMI) travelled to Lusaka, Zambia from July 13 to 15, 2016 on a joint emergency press freedom mission initiated due to concerns over the Zambia Revenue Authority (ZRA)'s June 21 seizure of assets of opposition newspaper *The Post*, including its offices and printing press.¹ The seizure was purportedly intended to collect disputed debts related to value added taxes (VAT) and employee income tax remittances.

The groups were particularly concerned over the seizure's potential impact on an August 11 general election, in which voters will choose Zambia's president and members of its General Assembly, and whether to adopt a new bill of rights. The delegates – IPI Executive Board Chair John Yearwood, AMI Senior Adviser and former IPI Executive Board Member Wangethi Mwangi, and IPI Director of Advocacy and Communications Steven M. Ellis – met with representatives from government, the leading opposition party, *The Post*, the judiciary, civil society and the legal community, and foreign diplomatic missions.

Background

Zambia is a landlocked country of approximately 15 million people in southern Africa bordering eight nations: the Democratic Republic of the Congo (north), Tanzania (north-east), Malawi (east), Mozambique (south-east), Zimbabwe (south), Botswana (south), Namibia (south-west) and Angola (west). Beginning in the late 19th century, the area was administered by the British South Africa Company, which in 1911 combined areas of modern-day Zambia under its control to form Northern Rhodesia, a British protectorate. In 1923, the United Kingdom took direct control of the area.

The country's name was changed to Zambia upon independence in 1964. Prime Minister Kenneth Kaunda became its first president and his United National Independence Party (UNIP) ruled Zambia as a one-party state until 1991, when he agreed to allow multi-party elections. Kaunda stepped down following his defeat by Frederick Chiluba, leader of the Movement for Multiparty Democracy (MMD), becoming one of the first mainland African heads of state to voluntarily relinquish power following free multi-party elections. Chiluba was re-elected in 1996. Following an unsuccessful bid to change the Constitution to allow him to serve a third term, he was succeeded by his vice president, Levy Mwanawasa of the MMD, who was elected president in late 2001. Mwanawasa was re-elected in 2006, but he died in office in 2008 and Vice President Rupiah Banda became acting president.

Banda was elected to complete Mwanawasa's term, but in 2011 he was defeated at the polls by Michael Sata of the Patriotic Front party (PF). However, Sata became increasingly ill during 2014 and died in October of that year before completing his first term. Vice President Guy Scott, a white Zambian of Scottish descent who was ineligible to run for the presidency because his parents were not born in the country, served as acting president until January 2015, when Edgar Lungu, a member of Sata's cabinet, was elected president to complete Sata's term.

Government

Zambia is a republic. The president is both head of state and head of government, and is elected by popular vote to a five-year term. Zambia's Constitution limits individuals to two presidential terms. The country is composed of 10 provinces, each of which is administered by an appointed governor.

Zambia's legislature, the unicameral National Assembly, is made up of 158 members serving five-year terms, plus a speaker. All but eight members of the Assembly are elected by voters in single-member constituencies; the others are appointed by the president. Assembly members elect the speaker, who must be eligible to serve in the Assembly, but not a member at the time of election.

The country's legal system is based on English common law, with Zambia's Supreme Court serving as its highest court and court of appeal. The Supreme Court is made up of the chief justice, deputy chief justice and seven other members, all of whom are appointed by the president. Zambia's High Court is the court of original and general jurisdiction, with subordinate courts, small claims courts and local courts empowered to hear lesser matters. A separate Constitutional Court was established earlier this year. A specialised court – the Tax Appeals Tribunal, previously known as the Revenue Appeals Tribunal – hears disputes between taxpayers and the Zambia Revenue Authority (ZRA).

Economy

Zambia is a member of the African Union, the Common Market for Eastern and Southern Africa (COMESA) – a 20-nation free trade block stretching from Libya to Swaziland – and the 15-member Southern African Development Community. Copper mining is the backbone of Zambia's economy, with the metal estimated to make up as much as 85 percent of the country's export earnings.² Zambia had one of the world's fastest-growing economies in the last decade.³ However, it has seen an economic

downturn amid falling copper prices and mine closures, an electricity shortage and a severe depreciation of its currency, the kwacha, making tax revenue collection extremely important.⁴

Zambia's economy is also burdened by widespread and extreme rural poverty; high rates of unemployment, birth and HIV/AIDS; and policies that reportedly distort agricultural and energy sectors.⁵ Zambia's government has attempted to blame the downturn on external factors, such as a slowdown in the economy of China, but opposition figures use it to question Lungu's economic competence.⁶



A campaign billboard for Zambian President Edgar Lungu, running for re-election as the PF party candidate, in Lusaka on July 15, 2016. Photo: IPI

General Election

Zambia holds a general election every five years to choose the president and members of the National Assembly. The next election is scheduled to take place on August 11, when a constitutional referendum will also be held to decide whether to approve a new bill of rights affecting a broad number of civil, political, economic, social, cultural, environmental and other rights. (See p. 20).

The August 11 election will be the first in which Zambia utilises a two-round system in the presidential race, a change adopted in 2015. If no candidate earns more than 50 percent of the vote, a second run-off election between the two top vote-getters will be scheduled. This year's election also marks the first in which candidates will be elected with vice presidential running mates who will, upon the president's inability to serve, serve the remainder of the term without needing to be elected.

Nine candidates are contesting the 2016 presidential election.⁷ However, only two of them – incumbent President Edgar Lungu of the PF and Hakainde Hichilema of the United Party for National Development (UPND) – are regarded as serious contenders.

Presidential Candidates

Lungu, 59, is an attorney who went through officer training with the Zambian National Service, part of the country's military. Previously a member of the UPND, he joined the PF under Sata. The PF – a centre-left party that currently holds 87 seats in the National Assembly⁸ and a consultative member of Socialist International – was formed in 2001, when Sata broke from Chiluba's MMD after Chiluba chose Mwanawasa as the MMD presidential candidate. The MMD, formed to oust Kaunda and his government in 1991, held an absolute majority in the National Assembly until 2011, when the PF, formerly the main opposition, became the dominant ruling party.



A campaign billboard for UPND presidential candidate Hakainde Hichilema in Lusaka on July 14, 2016. Photo: IPI

Following the 2011 election, Lungu joined the Sata government in the vice president's office. He was minister of home affairs before becoming defence minister in December 2013 and then justice minister the following year, serving in both posts simultaneously. Sata placed Lungu in charge of the country on October 19, 2014 when he travelled to London for what was described as a medical check-up, leading to a power struggle between Lungu and Scott upon Sata's sudden death nine days later.⁹

Lungu was selected as the PF candidate to complete Sata's term during a November 2014 party meeting held under controversial circumstances.¹⁰ He went on to narrowly defeat UPND candidate Hichilema in the 2015 election, 48.33 percent to 46.67 percent.¹¹ Lungu won six of Zambia's 10 provinces, including Lusaka, but voter turnout was only 32 percent, the lowest recorded for a presidential election in Zambia's history.¹²

Hichilema, 54, has served since 2006 as head of the UPND, a liberal political party holding observer status in Liberal International.¹³ Known popularly as "HH", Hichilema has also served as the leader of the United Democratic Alliance, uniting three opposition parties. The 2016 election is his fifth run for the presidency, following bids in 2006, 2008, 2011 and 2015. A businessman who studied in the United Kingdom, Hichilema is a millionaire and Zambia's second-biggest cattle rancher.¹⁴

Media Landscape

Television and radio are the dominant media in Zambia, with state-run broadcasters providing the population's main sources of information, followed by community radio.¹⁵ While not as directly influential, newspapers are an important source of information, particularly as many community radio outlets rely on newspaper reports in broadcasts. Private online news websites represent a growing, albeit still minor, news source, as only 19 percent of the population has Internet access.¹⁶

Zambia's major television broadcaster is the Zambian National Broadcasting Corporation (ZNBC), a department under the Ministry of Information, Broadcasting and Tourism. The broadcaster generally adopts a pro-government stance, or at least refrains from airing criticism of the government. It currently is the target of complaints by the opposition UNDP for refusing to air a number of campaign advertisements.

The ZNBC operates three television channels. Private broadcaster Muvi TV is well-regarded but requires a paid subscription. The ZNBC also operates four radio networks. Listeners in regions across Zambia can access some 64 other stations, most of them community-based.¹⁷ Listeners in Lusaka and Kitwe can also reportedly receive relays of the BBC and Radio France International.

Zambia has four major newspapers: the *Zambia Daily Mail*, the *Times of Zambia*, the *Daily Nation* and *The Post*. The first two are publicly owned and generally adopt a stance similar to the ZNBC in terms of criticising the government. Although the papers were partially privatised in recent years, they remain heavily subsidised by the state.¹⁸ The privately owned *Daily Nation* is similarly regarded as pro-government. Only *The Post* maintains a reputation for independence and balance, not so much in terms of coverage but in terms of willingness to criticise government officials and others across the board.

When Sata took power in 2011, the PF made a number of promises to respect press freedom.¹⁹ Notably, the government supported a system of voluntary self-regulation of journalists, but the system was not implemented. Sata's administration also renewed previous governments' pledges to free the public broadcaster from government oversight, which have gone unfulfilled.



Police fired tear gas on Post journalists gathered outside the paper's Lusaka offices on June 22, 2016, one day after the ZRA's seizure. Photo: David Kashiki/The Post

Recent Developments

The continuing government control of Zambia's most influential media has led to a subtle climate of self-censorship, compounded by a number of highly visible incidents of pressure in the last year targeting media outlets that host opposition figures on air or criticise PF officials. (See below). Journalists regularly complain of threats and harassment by Information Minister Chishimba Kambwili against those who engage in critical, or insufficiently deferential, coverage.

Notable incidents of pressure on media in the last year

- July 2015: Authorities bring criminal charges against *Post* Editor-in-Chief Fred M'membe, accusing him of disclosing classified information in an investigative piece about alleged PF corruption.²⁰
- July 2015: armed PF supporters enter the offices of Radio Icengelo in Kitwe, preventing UPND President Hakainde Hichilema from speaking on one of its programs.²¹
- August 2015: a PF official in Zambia's Central Province orders U.N.-supported Mkushi Radio's board dissolved for alleged bias toward the UPND.²²
- August 2015: ZNBC radio producer Martin Maseka is suspended for criticising Information Minister Chishimba Kambwili's threat to fire staff protesting questionable management practices.²³
- September 2015: Zambian President Edgar Lungu, addressing a rally in Solwezi, says that "battle lines" have been drawn between himself and M'membe.²⁴
- October 2015: Zambian Information Minister Chishimba Kambwili threatens to revoke Lusaka broadcaster Radio Phoenix's licence for disseminating "anti-government propaganda".²⁵
- October 2015: Radio Phoenix's Christine Ngwisha is fired after Kambwili alleges bias toward the UPND because no one calls in to ask questions during his live, on-air interview with her.²⁶
- October 2015: A bullet pierces *The Post's* offices, travelling through the roof of its newsroom and into the floor.²⁷ Police claim the bullet was stray and non-lethal.²⁸ A similar incident reportedly occurs at the offices of the *Zambia Daily Mail* in March 2016.²⁹
- December 2015: PF supporters in Chipata assault a Breeze FM security guard and damage property while disrupting an interview with Rainbow Party President and former PF Secretary General Wynter Kabimba. The station subsequently cancels all political programming.³⁰
- December 2015: PF supporters attack *Post* journalist Peter Sukwa and Feel Free Radio journalist Kelvin Phiri as they look into allegations that non-citizens are being registered on the border with Malawi to vote in Zambian elections. One journalist claims an attacker urinated into his mouth and threatened to set him ablaze after pouring fuel on him.³¹
- March 2016: Radio Mano suspends operations after threats of violence by PF leaders and cadres.³²
- April 2016: Two *Post* journalists are criminally charged with defaming Lungu for reporting an opposition politician's allegation that he used taxpayer money to vacation.³³
- May 2016: Threats by Kambwili lead a University of Zambia (UNZA) vice chancellor to cancel an appearance by a UPND politician on the school's radio station.³⁴

Troublingly, in June, excerpts were published from a leaked document purporting to outline a PF strategy to rig election results and brutalise the opposition.³⁵ Among other efforts, it indicated that “No form of media should be given to the UPND in the form of news or campaign advertisements” and that a “massive media character assassination” campaign should be launched against Hichilema. The document also said that “prime efforts” would be made to eliminate coverage by *The Post*.

The elections are taking place against a backdrop of an increase in political violence to a level never witnessed in Zambia. The most striking example is the July 8 use by police in Lusaka of live ammunition to quell clashes with UPND supporters that erupted after police abruptly cancelled a party rally.³⁶ One UNPD supporter was killed, leading the country’s election commission to order all campaigning in the capital city suspended for 10 days.³⁷

Pro-government journalists say they are threatened and harassed at opposition party rallies, while opposition journalists say the same of pro-government rallies. The UPND claims that at least three people have been killed as a result of their support for the party and it cites a number of other violent attacks on its supporters. The party also accuses the PF of actively interfering with its ability to campaign by preventing Hichilema from travelling by helicopter³⁸ and manipulating Lungu’s travel schedule to pre-empt UPND rallies across the country, often at the last minute.

About The Post

Zambia’s *The Post* is a tabloid daily newspaper published by Post Newspapers Limited, which journalist Fred M’membe and others co-founded in 1991 in Lusaka. IPI recognised M’membe as a World Press Freedom Hero in 2000 for his efforts to bring news and information to Zambians through the newspaper despite arrests, attacks and intimidation by the government.³⁹ *The Post*, one of the country’s most politically outspoken newspapers throughout its run, celebrated 25 years of existence on July 26, 2016. In an editorial, it called the day a “sad happy anniversary”, given the enormous pressure the paper currently faces.⁴⁰

Prior to the seizure of its offices and printing presses, the daily reportedly had a circulation of 40,000 to 50,000, which has now dropped to approximately 6,000 to 8,000 with a much-reduced pagination. The number of active employees has also dropped from approximately 1,800 to 1,500, and many of those currently working do so without knowing for certain when they will next be paid. In the initial weeks following the seizure, employees worked from an open-air newsroom on the side of the street outside *The Post*’s shuttered offices, but they have since been chased away. Pressure on the paper has led to an increase in its price, from 10 to 15 kwacha per copy, and to an end to its distribution outside Lusaka.

The paper’s strident coverage exposing government corruption and abuses of power has earned it plenty of enemies. Despite its role in helping to oust Kaunda and install Chiluba as Zambia’s first democratically elected president, *The Post*’s reporting soon earned Chiluba’s ire and M’membe and *Post* staffers faced charges of criminal defamation, criminally defaming the president, contempt of parliament, possessing and publishing classified documents, publishing false information, treason, sedition and inciting the army to revolt during Chiluba’s presidency.

(L) to (R), AMI's Wangethi Mwangi, The Post's Fred M'membe, and IPI's John Yearwood and Steven M. Ellis in Lusaka on July 14, 2016. Photo: IPI



M'membe faced similar charges under subsequent presidents. In 2005, he faced criminal defamation charges after he called Mwanawasa a man of “foolishness, stupidity, and lack of humility” in an editorial.⁴¹ Under the Banda administration, he was briefly imprisoned for contempt in 2010 after *The Post* published an article by a U.S.-based Zambian law professor criticising an obscenity case against one of the paper's editors.⁴² In an attempt to call attention to consequences of a hospital strike, the editor, Chansa Kabwela, had sent a letter to public officials and others that included photos of a woman giving birth on the street to a child that later died.

The Post was a critic of Sata while he was a member of the MMD, but supported him as the PF candidate to unseat Banda in 2011 and during Sata's tenure as president. However, the paper has fiercely criticised Lungu since his election. In July 2015, M'membe faced charges for allegedly disclosing classified information in an article about alleged PF corruption.⁴³ Later that year, Lungu told a rally in Solwezi that “battle lines” between himself and M'membe had been drawn.⁴⁴

The Post has been criticised by some in Zambia over perceived support for the Rainbow Party, which was formed in its current iteration in 2014 when former PF Secretary General Wynter Kabimba and several other PF members split from the party.⁴⁵ In 2014, Finance Minister Alexander Chikwanda accused M'membe and Kabimba of being part of a “cartel” that Chikwanda said sought to seize power in Zambia as Sata ailed.⁴⁶ The accusation followed exposés in *The Post* alleging that Chikwanda was pushing a scheme to refund some 3.6 billion kwacha in VAT payments to mining companies in order to advance his own business interests.⁴⁷

Tax Case

When Sata took office in 2011, *The Post* reportedly faced tax arrears and the ZRA, after reconciling the amount owed, granted the paper's request to waive penalties and interest. However, during Sata's final year in office, concerns about his health – and whether he was actually running the government – increased. Despite the president's positive relationship with *The Post*, just one month before

Sata's death the ZRA accused the paper of failing to turn over 26 million kwacha in VAT receipts and employee income tax remittances during the period of 2010 to 2014.⁴⁸

The Post asked for an instalment payment plan, but it says ZRA Commissioner General Berlin Msiska intervened to withdraw the commissioner's authority to negotiate with it and to deny the request.⁴⁹ Zambia's Revenue Appeals Tribunal was not functioning at the time, so *The Post* turned to the Lusaka High Court, which granted leave to challenge the ZRA's decision.⁵⁰ *The Post* argued that the demand for full payment as a lump sum was irrational and that its right to appeal to Msiska was effectively abrogated when he intervened, rather than allowing his subordinate to make a decision.

The High Court rejected *The Post's* challenge in October 2015 and the paper appealed to Zambia's Supreme Court.⁵¹ When the ZRA raided *The Post's* offices days later demanding payment of penalties and interest,⁵² the paper also sought a stay of execution until the Supreme Court ruled. The High Court granted the request on November 10, noting that allowing the ZRA to collect immediately would lead to *The Post's* closure, rendering the appeal "nugatory and academic".⁵³



Post journalists work from their open-air newsroom across the street from the paper's locked offices in Lusaka on July 13, 2016. Photo: IPI

ZRA Appeal

As *The Post* awaited its chance to plead its case before the Supreme Court, the ZRA filed its own appeal seeking to lift the stay. In December 2015, the ZRA also opened another investigation targeting *The Post* for alleged "tax malpractice".⁵⁴ *The Post* maintains that it was steadily paying off the 26 million kwacha bill and claims that it has now paid that amount in full. However, in early 2016 the ZRA decided that the paper actually owed a total of 101.8 million kwacha for 2010 to 2015,⁵⁵ a figure that reportedly included the initial 26 million kwacha bill for 2010 to 2014.

The ZRA, after speaking with *The Post's* tax consultants, reduced the new bill to 53.9 million kwacha.⁵⁶ But *The Post* also disputes that amount. The paper rejects the government's assertions that it failed to hand over VAT receipts. It also argues that the ZRA incorrectly calculated income tax withholding amounts on wages not actually paid and on benefits given to *Post* managers.⁵⁷ The paper concedes it may have been negligent in calculating how much to remit to the government, but maintains that it never engaged in wilful concealment or tax evasion.

On June 15, 2016, the ZRA served a demand notice for 53.9 million kwacha.⁵⁸ The following day, the Supreme Court published a ruling – but only on the ZRA's challenge to the stay, which had been filed later than *The Post's* appeal. The Supreme Court said the paper was not entitled to injunctive relief while its appeal was pending because the High Court had determined the challenge had no merit.⁵⁹ As of the publication of this report on August 5, 2016, the Supreme Court still has not ruled on *The Post's* appeal.

The ZRA rejected *The Post's* objections to the new bill on June 20 and the next day the agency again raided *The Post*, seizing its offices and printing press.⁶⁰ Employees were forced out, the premises were locked and heavily armed police guards were stationed on the grounds. However, the warrant of distress that the ZRA presented was blank, with no indication of the amount allegedly owed.⁶¹ Responding to *The Post's* objections, the ZRA on June 23 confirmed that the warrant sought 53.9 million kwacha.⁶² The paper tried to appeal to the ZRA's commissioner general the next day, but he told them he was out of town and could not address the matter until July 7, two weeks later.⁶³

'It is against the rules of natural justice to simply refuse to consider objections to an assessment brought on appeal by a taxpayer. This, in a way, is hindering the justice system.'

- Tax Appeals Tribunal Registrar Chola Shapi-Mutambo

Tax Appeals Tribunal

As the new bill more than doubled the one at the heart of the Supreme Court case, *The Post* sought review of the additional amount before the Tax Appeals Tribunal, to which Finance Minister Chikwanda had appointed five new registrars in December 2015.⁶⁴ *The Post* specifically sought review of how much it actually owed and a stay of execution while that review was pending.

On June 27, Tribunal Registrar Chola Shapi-Mutambo granted the stay, ordering the ZRA to hand back *The Post's* premises and equipment so that it could conduct business.⁶⁵ Scheduling a July 11 hearing, she also ordered *The Post* to pay whatever portion of the new bill that it believed it owed and to turn over other property worth 53.9 million kwacha as security until the Tribunal could rule.⁶⁶

The Post obtained a copy of the order that evening and served it on a ZRA commissioner, who signed it. Employees then proceeded to the paper's offices, which Deputy Managing Editor Joseph Mwenda entered. However, political operatives loyal to presidential special advisor Kaizer Zulu soon arrived and advised that the order would not be honoured. Leaving the offices, Mwenda handed his telephone to M'membe's wife, Mutinta Mazoka-M'membe. Police allegedly attacked her and then M'membe as well when he reacted. M'membe, his wife and Mwenda were arrested, held overnight and charged with uttering a forged document – the registrar's order – and criminal trespass.⁶⁷ The next day, the ZRA asked the Tribunal to dismiss *The Post's* appeal and to throw out the stay order.⁶⁸

Presidential Reaction

Meanwhile, Lungu angrily rejected criticism of the ZRA's actions. In a June 27 meeting with U.S. diplomats, he questioned their right to speak out about the matter, arguing that Zambian diplomats in the United States would never comment on its policies.⁶⁹ Lungu also said that if the Americans wanted *The Post* to reopen, they should pay the 53.9 million kwacha bill on its behalf.⁷⁰

On July 7, representatives of *The Post* sought to meet with the ZRA commissioner general, but he refused to hear them, indicating that the matter was now before the Tribunal.⁷¹ Four days later, ahead of the hearing, *The Post* amended its appeal to note the commissioner general's refusal to talk.⁷²

At the July 11 hearing, *The Post* asked Shapi-Mutambo to hold the ZRA in contempt, while the agency urged her to discharge the stay and block *The Post's* appeal. The registrar declined the requests, chastising both sides for failing to comply with her order, despite *The Post's* argument that it could not make any payments given the ZRA's control over its seized bank accounts.⁷³

Registrar's Ruling

Two weeks later, Shapi-Mutambo denied the ZRA's bid to block *The Post's* appeal and upheld her earlier order.⁷⁴ The registrar said that the ZRA's refusal to even consider *The Post's* objections to the 53.9 million kwacha amount gave the Tribunal jurisdiction to hear the appeal.⁷⁵ She wrote: "It is against the rules of natural justice to simply refuse to consider objections to an assessment brought on appeal by a taxpayer. This, in a way, is hindering the justice system."⁷⁶

The paper continues to publish online and in print from a secret location, sending at least one copy daily to the State House to prove that it has not been silenced.

Shapi-Mutambo also rejected the argument that the Tribunal could not stay a seizure the ZRA contended had already happened.⁷⁷ Noting that the execution against *Post* property was an ongoing "process", she opined that "[t]here was much to be stayed" when *The Post* sought the order in the days following the initial June 21 seizure.⁷⁸

The registrar extended her order until the Tribunal can hear *The Post's* Appeal, but as yet the ZRA still refuses to honour it.⁷⁹ *The Post*, which opted to continue publishing by guerrilla methods following the seizure in order to keep from being snuffed out of existence, still cannot use its own offices or printing press. Nevertheless, the paper continues to publish online and in print from a secret location, sending at least one copy daily to the State House to prove that it has not been silenced.

Government Pressure

The size and circulation of *The Post's* print version have drastically declined, and it is unclear how long the newspaper can survive. Although no court has deemed publication of the paper illegal, government agents have raided outlets suspected of printing copies and intimidated others who might do so. The government has brushed off questions about one of the raids, claiming the printer was the target of unrelated smuggling charges, but it has failed to justify other raids. Similarly, *The Post's* attorneys say their defence of the paper led the ZRA to open an investigation targeting them; part of what the lawyers argue is a campaign to cut off any support for their client.

Late last month, following the IPI/AMI visit to Zambia, armed police conducted a midnight raid on the home of a *Post* staffer, searching for "illegal goods", i.e., copies of *The Post*.⁸⁰ The next day, *Post* employees were forced to flee their open-air newsroom outside the paper's shuttered offices amid warnings that PF supporters bent on violence were en route to the area.⁸¹ When the PF supporters began to arrive by the busload, police reportedly refused *Post* employees' requests for protection.⁸² The newsroom was moved to the grounds of a nearby Catholic cathedral, but pressure on church leaders soon led to its ejection. *The Post* must now be written, as well as printed, in secret.

Government Arguments

During the course of meetings with the IPI/AMI delegation, representatives of Zambia's government advanced a number of arguments in support of the ZRA's actions against *The Post* and its refusal to honour the Tribunal's order, as set forth below. These arguments, however, are unconvincing.

1. The case against *The Post* is a normal procedure.

False. Civil society representatives and others roundly rejected the premise that the case is normal, with one remarking that the case represented a litany of "firsts" in Zambian history. These include the ZRA's seizure of a media outlet's most-vital assets, leaving it shuttered; the fact that this occurred less than eight weeks before a major general election; the ZRA's utter unwillingness to speak with *The Post* to resolve the case; the novel issues presented before the Supreme Court; and the ZRA's wilful defiance of the Tribunal's order. Nothing about the matter is routine.

2. *The Post* is being treated like any other taxpayer that failed to pay taxes.

False. In a meeting with the IPI/AMI delegates, presidential spokesman Amos Chanda confirmed reports that many media outlets sympathetic to the PF, and which are subsidised by taxpayers, have failed to stay current on taxes owed to the government. Noting that a demand for full payment would lead to those outlets' closure, Chanda admitted that the government gave them special treatment, asking them to pay current taxes as they came due and to make payments on back taxes "when they can". In contrast, *The Post* has been given no such accommodation.

In a meeting with Zambian Supreme Court Chief Justice Irene Mambilima, Deputy Chief Justice Marvin Mwanamwambwa and other court representatives, the IPI/AMI delegates



Fred M'membe, Post co-founder and editor-in-chief, sells copies of the paper on the street in Lusaka on June 27, 2016. Photo: Joan Chirwa/The Post

were told that *The Post* had twice failed to meet the terms of previous instalment payment plans to clear tax debts. Court representatives raised the assertion to explain ZRA Commissioner General Msiska's 2014 refusal to allow *The Post* to enter into an instalment plan to pay the 26 million kwacha bill, a decision that led directly to both appeals before the Supreme Court.

But that assertion is irrelevant to the instant matter, in which *The Post* seeks review of the ZRA's demand for 53.9 million kwacha. The Tax Appeals Tribunal's order directs *The Post* to immediately pay the portion that the paper acknowledges owing and to turn over assets as security for the full amount. The order contemplates lump sum payments; it makes no mention of instalment plans. Even if *The Post* did fail to fully meet the terms of a previous instalment plan, that in no way justifies depriving it of the right to a fair and independent determination of how much it actually owes.

3. The Post is merely dragging the case out to delay payment of taxes due.

False. *The Post* has consistently acknowledged that, due to mistakes, some amount of taxes may be owed. Similarly, it has never refused to pay taxes it may be found to owe. It simply asks that the ZRA work with it to determine the correct amount. But the agency has fought that request tooth and nail, taking the unprecedented step of seizing the paper's office and printing press, imperilling its existence. *The Post* is left with no alternative but to seek review by an independent arbiter, the Tax Appeals Tribunal, which was created for exactly such a situation. Any other taxpayer in Zambia, when faced with excessive claims of tax liability, would rightfully do the same.

4. The Tax Appeals Tribunal lacks jurisdiction over the matter.

False. The Tax Appeals Tribunal is a specialised court created to hear just this type of case. Moreover, as Registrar Shapi-Mutambo noted in her July 27 order, the ZRA's refusal to hear *The Post's* objections effectively constituted a decision rejecting those arguments, exhausting *The Post's* administrative remedies and granting the Tribunal jurisdiction. Zambia's High Court and Supreme Court had jurisdiction over the dispute over payment of the 26 million kwacha bill, given the lack of a Tax Appeals Tribunal to

turn to at that point. But that earlier dispute constitutes a separate matter. The ZRA chose to lump the older debt in with the 53.9 million kwacha bill in 2016. The 2016 assessment includes newly assessed amounts that more than double the previous bill. It is a new bill, giving independent grounds to seek relief. To hold otherwise would prevent taxpayers from challenging new amounts the ZRA tacks on to older bills, no matter how fantastical. That would be a monumental injustice.

5. Turning to the Tribunal is an attack on the judiciary's independence.

False. Many government officials and pro-government media outlets have attempted to paint the Supreme Court's June 2016 decision lifting the High Court's November 2015 stay of execution as a ruling that *The Post* owes the full 53.9 million kwacha amount assessed by the ZRA. Presidential spokesman Amos Chanda argued to IPI/AMI delegates that the Supreme Court ruling was that "*The Post* owes this money" and that *The Post's* request for review of the new amount by the Tax Appeals Tribunal disrespects the judiciary. That could not be farther from the truth.

The Supreme Court determined only that Zambian procedural law did not allow the High Court to block the ZRA from initiating collection efforts on the first 26 million kwacha bill while the Supreme Court considers the case. Indeed, *The Post's* challenge to the High Court's rejection of its claim that the ZRA acted irrationally in rejecting instalment payments and abrogating a lower Commissioner's ability to negotiate with *The Post* remains pending. *The Post's* attorneys may dispute the reasoning of the decision with respect to the High Court's stay, but they acknowledge that it is final.

However, again, that decision is limited only to the question of a stay preventing execution to collect the older 26 million kwacha bill. The 53.9 million kwacha claim is a new matter that no court has yet reviewed. *The Post's* request for adjudication by the Tax Appeals Tribunal of a matter that was never before the Supreme Court does not demonstrate disrespect of the judiciary. But the same cannot be said for the gross mischaracterisations by government officials of the Supreme Court's ruling or for the ZRA's ongoing refusal to comply with the Tax Appeals Tribunal's order.

6. The ZRA is acting independent of political pressure.

False. The circumstances surrounding the case belie this claim. The president's spokesperson has admitted that pro-government media with outstanding tax debts are given special accommodation. Pro-government media have regularly been tipped off about official actions targeting *The Post*. Reliable sources indicate that political operatives from the State House played a role in the June 27 action. Government agents have raided and harassed printers suspected of publishing *The Post*, even though no legal order prevents anyone from doing so.

Police officers fired tear gas to disperse *Post* employees outside its shuttered offices shortly after the June 21 seizure⁸³ and refused to protect them when PF cadres arrived by the busload on July 20. Pressure led to the eviction of *Post* employees from the grounds of a Catholic cathedral shortly after their presence there was revealed. The newspaper must be both written and printed from secret locations.

No fair observer can deny an obvious and extreme degree of political pressure. Indeed, presidential spokesman Amos Chanda admitted to the IPI/AMI delegation that he would like to see *The Post* closed or no longer under M'membe's control.

7. The case is about taxes.

False. If the case were about taxes, *The Post* would be operating at full capacity, generating vital tax revenue while the exact amount it owes is determined. But it is not. The ZRA could accept *The Post's* payment of an initial amount and its exchange of other assets as security for the 53.9 million kwacha bill in exchange for the return of its offices and printing press. But it refuses to do so.

At every stage, the ZRA has rebuffed *The Post's* requests to sit down with its tax consultants and work toward a resolution. Instead, the agency continues to waste time and taxpayer money litigating a fight to keep from even talking to *The Post*. Even if the paper chose to give up and pay in full tomorrow, it could not do so, because the ZRA, which controls its seized bank accounts, will not talk to it.

The overwhelming pattern of government conduct – including the seizure of a critical media outlet's offices and printing press less than eight weeks before a critical election, defiance of the Tax Appeals Tribunal's order, harassment and intimidation of printers, antipathy toward *The Post* and its staff and refusals to protect them in the face of threatened violence, and a willingness to grant special treatment to pro-government media outlets that have fallen behind on tax obligations – conclusively demonstrates that this case is not about the timely and proper collection of taxes.

If this case were about taxes, The Post would be operating at full capacity, generating vital tax revenue while the exact amount it owes is determined. But it is not.

8. Government officials are angered and feel insulted by The Post's content.

True. This is the weakest, and most surprising, argument. For 25 years, *The Post* has devoted itself to exposing government corruption and abuses of power. In many instances, politicians and officials have labelled the paper's coverage insulting or defamatory. Scrutiny is often unwelcome, but democracy needs journalists to play that watchdog role. The role of politicians and officials on the public stage gives them an outsized ability to respond to perceived slights; they must therefore accept a greater degree of criticism than the average citizen. Accountability demands it.

Those in power who believe themselves falsely or recklessly maligned have ready access to the legal system. But to support the shuttering of one of Zambia's only truly independent voices weeks ahead of an election that will play a key role in determining the country's future because powerful interests deem that voice "disrespectful" or "hurtful" is an affront not only to the right of freedom of the press, but to Zambian voters' right to freely share and receive information.

Conclusion

Zambia has avoided much of the war and instability that marked many other African countries following independence. The country has enjoyed a reputation as a leader in respect for democracy and human rights in the region. However, recent events – including a rise in political violence and pressure on media in general – have cast a troubling shadow over that reputation.

Voters need and deserve to hear a full range of voices as they decide their future and *The Post* has played a vital role in providing an alternative to government-dominated mass media in Zambia. Unshackling that voice is critical if Zambians are to vote in an atmosphere that can be deemed free and fair.

The ZRA has refused to work with *The Post* to reconcile its disputed debts and allow payment, making the seizure appear to be an effort by President Lungu to silence a persistent critic in order to hold on to power. IPI and the AMI are concerned that, if allowed to stand, the effort could have an extremely negative impact on democracy in the region, insofar as other leaders might take note and seek to misuse state power to similar ends. For the sake of the citizens of Zambia and others in the region, that must not be allowed to happen.

Recommendations

IPI and the AMI call on Zambia's government to:

- Immediately drop all criminal charges against M'membe and the others charged with him in relation to the June 27 incident, and hold those responsible for assaults on them accountable;
- Allow all media outlets in Zambia to operate independently and to cover all parties contesting the elections, as well as any subsequent runoff election, in a free and fair manner;
- Ensure that the ZRA, as well as all other government entities, is allowed to fulfil its statutory functions without political interference;
- Respect the independence of the judiciary and of the Tax Appeals Tribunal, and play a leadership role in encouraging the ZRA as well as all other parties in proceedings before those bodies to respect and comply with their decisions;
- Come together with representations of all political parties contesting elections to denounce political violence and pressure targeting journalists; and
- Publicly reaffirm the vital role of media freedom to democracy and ensure that all government officials respect it in line with Zambia's domestic and international human rights commitments, and refrain from bringing political pressure to bear on media outlets.

The groups further renew their call on the ZRA and *The Post* to both comply with the decision by the Tax Appeals Tribunal and to work together to ensure that it is carried out.

The groups finally call on foreign governments, and on domestic Zambian organisations and international organisations, to encourage Zambia's government to uphold its international human rights commitments and respect the right of all of the country's citizens to free expression.

Know...

- The current and proposed Bill of Rights
- Article 79 and the proposed Articles 301, 302 and 303

*Note that the column for the current Articles are aligned with the proposed articles that are of a similar nature. Where there is no similarity or comparison, the word 'none' is used.

Civil and Political rights	
Current Articles	Proposed Articles
11 a Summary of fundamental Civil and Political Rights	11 a Status and application of the Bill of Rights 12 a Recognition of the role of Civil Society Organisation 13 a Development of further human rights laws and cases Interpretation of the Bill of Rights
12 (2) a a person may deprive an unborn child of life in exceptional circumstances	15 (1) The life of a person begins at conception
13 a Protection to right to personal liberty	16 a Freedom of person 32 a Access to justice 33 a Rights of suspects 34 a Rights of persons in custody 35 a Rights of accused persons and detainees
14 a Protection from slavery and forced labour with exceptions	18 a No exceptions on provisions amounting to forced labour
15 a Protection from inhuman treatment	17 a Security of persons and protection from inhuman treatment including human trafficking
16 a Protection from deprivation of property with exceptions	29 a No exceptions on provisions on acquisition of property
17 a Protection of privacy of home and other property with exceptions	19 a Protection of privacy of home and other property without exceptions
18 a Provisions to secure protection of law	30 a Equality before the law 31 a Fair administration 32 a Access to justice 33 a Rights of suspects 34 a Rights of persons in custody 35 a Rights of accused persons and detainees 36 a Fair trial 37 a Right to re-trial and re-examination of evidence
19 a Protection of freedom of conscience	20 - Freedom of conscience, belief and religion
20 a Protection of Freedom of Expression	21 a Freedom of Expression
21 a Protection of Freedom of Assembly and Association	25 a Freedom of Association 26 a Right to assemble, demonstrate, picket and petition
22 a Freedom of movement	27 a Freedom of movement and residence
23 a Protection from discrimination on the ground of race, etc	14 a Protection from discrimination
24 a Protection of young persons from exploitation	50 - Further protection of young persons
25 a Derogation from fundamental rights and detention	55 a Derogation of rights and freedoms during emergency or national disaster
26 a Provisions relating to restriction and detention	34 a Rights of persons in custody 35 a Rights of accused persons and detainees 36 a Fair trial
27 a Reference of certain matters to special tribunals	34 (3) Relief of <i>habeas corpus</i> specified
28 a Enforcement of protective provisions High Court	57 a Enforcement of the Bill of Rights • Constitutional Court 58 a President report on the state of human rights to Parliament annually
29 a Declaration of war	198 a Declaration of war
30 a Declaration of public emergency	199 a Declaration of state of public emergency and threatened state of public emergency • President in consultation with cabinet
31 a Declaration relating to threatened emergency • Act of Parliament	
32 - Interpretation	303 (6) & 266 of 2016 constitution a further interpretation
None	22 a Access to information 23 a Freedom of media 28 a Non a refoulement for asylum seekers and refugees 38 a Equality of both gender
Economic, Social, Cultural and Environmental Rights	
None	39 a Economic and Social Rights
None	40 a Choice of Trade, Occupation or Profession
None	41 a Labour Relations
None	42 a Consumer Rights
None	43 a Language, Culture and Intellectual Property Rights
None	44 a Environment
None	45 a Progressive Realisation of Economic, Social, Cultural and Environmental Rights
Further and Special Rights	
None	46 a Further rights for older members of society
None	47 a Further protections and rights relating to marriage and family
None	48 a Special and further rights for children
None	49 a Further rights for youth
24 a Protection of young persons from exploitation	50 a Further protection of young person
None	51 a Further rights for persons with disabilities
Article 79	
Process of amending the constitution and the BoR	Articles 301 & 303
Amendments requiring referendum	Process of amending the constitution and the BoR Amendments requiring referendum;
• Bill of Rights • Article 79	1 - Supremacy of the Constitution 4 - Sovereignty of the Republic 5 - Sovereign authority of the people of Zambia 47 - Electoral System for Presidential and Parliamentary 106 - Tenure of office of the President and vacancy 110 - Vice Presidency election to office and swearing in 116 - Ministers (appointment, role and vacancy) 117 - Provincial Ministers (appointment, role and vacancy) Part 3 - Bill of Rights Article 301 and 302
Referendum threshold a 50% of eligible voters voting yes	303 a Referendum threshold a 50% of registered voters voting and more 50% of vote in favour
No Time frame	303 a Referendum to be held within 120 days after first reading of the bill
Requirement a Holder of green NRC and attained the age of 18	303 a Requirement a Registered voter

A page from "Understand the 2016 Referendum. Yes or No?", produced by the Electoral Commission of Zambia. It identifies rights that will be impacted if voters choose to approve a referendum question during the August 11, 2016 general election.

Notes to Text

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- 21 <https://freedomhouse.org/report/freedom-world/2016/zambia>
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A billboard in Lusaka near the offices of the Delegation of the EU to Zambia and COMESA on July 13, 2016. Photo: IPI

About IPI

The Vienna-based IPI is a global network of editors, media executives and leading journalists dedicated to furthering and safeguarding press freedom, promoting the free flow of news and information, and improving the practices of journalism. Formed in 1950 at Columbia University by 34 leading editors from 15 countries on the belief that a free press would contribute to the creation of a better world, IPI today includes members in more than 100 countries and holds consultative status with the Council of Europe and the United Nations.

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About AMI

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